IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 532 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI NANJIBHAI MATHUKIA

Versus

STATE OF GUJARAT

Appearance:

MR HRIDAY BUCH for Petitioner

MR AJ DESAI, APP for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 07/02/2001

ORAL JUDGEMENT

1. Ashokbhai Nanjibhai Mathukia, applicant-original accused has filed this Criminal Revision Application under Section 401 of the Code of Criminal Procedure (hereinafter referred to as `the Code') challenging the order dated 30th November, 2000, passed by the learned

Sessions Judge, Junagadh, in Criminal Misc.Appln.No.521 of 2000. The learned Sessions Judge by his judgment and order refused to hand over the custody of 12-Bore Barrel Rifle to accused.

2. The facts giving rise to this application are as under:-

2.1 The applicant accused is engaged in construction activities in Junagadh City since last many years. It has been submitted that as certain persons having sound criminal records and being multifarious activities have concentrated in the construction business throughout the State of Gujarat and especially in Junagadh City. As the applicant is a renowned in this business is facing immense danger on the life of the applicant as well as his family members and hence the applicant purchased a 12 Bore Barrel Rifle on 14th December, 1996. It has been submitted that the applicant has a license for acquisition, possession of the said arm. It has also been submitted that said license has been expired on 31st March, 2000, and the application for renewal has already been applied.

2.2 It has been further submitted that a complaint has been filed against the applicant and his family members which has been registered at C.R.No.I 153 of 1999 before the Junagadh City `B' Division Police Station for the offence punishable under Secs.307, 147, 148, 149, 323, 404 of the Indian Penal Code and Section 135 of the Bombay Police Act. It has been submitted that the said complaint was filed with the ulterior motive just to harass and disrepute the applicant.

2.3 It has been stated that pursuant to the aforesaid complaint, the applicant is released on regular bail. It has been submitted that Sessions Case No.18/2000 is pending before the Sessions Court, Junagadh. It has been submitted that the prosecution, while investigating in the said offence, had seized 12 Bore Barrel Rifle as it is alleged in the complaint that the applicant fired in air from the said rifle at the time of alleged incident. It is further submitted that now the said rifle is lying as seized property before the Sessions Court, Junagadh bearing receipt No.70/99.

2.4 During the pendency of the said proceedings, the applicant preferred an application for returning the said 12 Bore Barrel Rifle back to the applicant as stated above. The learned Judge by his judgment and order dated 30th November, 2000, pleased to reject the said

application. The learned Judge has stated that in this case offence is under Sec.307 of IPC and the 12 Bore Barrel Rifle is used and if said rifle is handed over to the applicant then there may be possibility that further offence can be alleged against the applicant.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order of the learned Sessions Judge, the applicant has preferred this application.

3. This Court has already issued rule on 22nd January, 2001. Shri H.C. Buch, learned advocate is appearing on behalf of applicant-original accused. He submitted that in this case only offence under Sec.307 of IPC where the applicant has only fired in air from the said rifle. He submitted that the applicant is a respectable businessman and for his own safety he is required 12 Bore Rifle in this behalf. He further submitted that said rifle is a automatic rifle and if it is lying in the custody of police the same shall be deterioate and it shall not be used in future. He submitted that the applicant has applied for licence and the applicant desire to keep the said rifle only for his self defence.

4. Shri A.J.Desai, learned APP for the opponent-State has tried to support the order of the learned Sessions Judge.

5. In view of the peculiar facts and circumstances of the case and in view of the facts stated there in that the applicant is a business man and having good reputation. He desires to have said rifle only for his self defence. The only allegation against him is that he has fired in the air from the said rifle and there is no other evidence having used. Therefore, in peculiar facts and circumstances of the case, I allow the custody of the said rifle to the applicant on conditions that he shall strictly follow the conditions laid down by the licensing authority in this behalf. I hope and trust that the applicant will use the said rifle only for his self defence and he shall not use in any other manner. The said 12 Bore Barrel Rifle be handed over to the applicant subject to renewal of the license. The applicant-accused shall undertake to produce as and when Investigating Officer desire for the custody of the said rifle. Learned advocate for the applicant has assured this Court in this behalf. The applicant-accused is directed to give undertaking and to pay security of Rs.5000/- to the trial Court in this behalf. This Criminal Revision Application stands disposed of accordingly. Rule is made

absolute to the aforesaid extent. Direct service is permitted.

(K.M. Mehta, J.)

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